



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152374

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 31, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether this appeal is timely and, if timely, whether Petitioner's request for FoodShare was correctly denied because of income in excess of FoodShare income limits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Lashun Johnson
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was notified that he had to complete a six-month report form in April 2013 in order to continue his FoodShare benefits.

3. The agency did not receive the six-month report form in April and on April 17, 2013 sent Petitioner a Notice of Decision that informed him that his benefits have been discontinued effective May 1, 2013 for failing to submit that form. Appeal instructions were included in the notice and the appeal deadline was July 31, 2013. The notice was sent Petitioner at the above address.
4. On May 9, 2013 the agency did receive Petitioner's six-month report form. It requested verification of income. Petitioner asked for an extension of time to submit that information. The agency did receive Petitioner's income information as of June 7, 2013.
5. The agency processed Petitioner's income information and determined that he had total gross income of \$1880.11. This came from Social Security Disability Income and the amount of \$811.00 and earned income of \$1077.11. The earned income was determined by the agency from Petitioner's 4/26, 5/3, 5/17 and 5/24 paystubs that showed 136.4 hours of work at \$5.50 per hour and \$251.83 in tips. See agency summary, Ex. #2.
6. The agency sent Petitioner a notice dated June 12, 2013 that informed him that his FoodShare renewal had resulted in a denial of benefits as income was in excess of FoodShare gross income limits. That noted an appeal deadline of September 11, 2013.
7. Petitioner is paid weekly. As of May 17, 2013 his total 2013 income was \$6149.57 or \$1230.00 per month.
8. Petitioner's household size is 1.
9. A paper appeal was filed with the Division of Hearings and Appeals on September 26, 2013. Agency case notes reflect a September 5, 2013 oral request for a hearing that was not acted on by the agency.

DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of a matter if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FoodShare must be filed within 90 days of the date of that action. 7 *CFR*, §273.15(g). A FoodShare appeal may be filed orally with the Division of Hearings and Appeals or the local agency:

(2)...

(a) A request for a hearing may be made in writing or orally and may be made to the agency or the division. An oral request to the agency shall be reduced to writing by the agency and signed by the Petitioner, except that a request involving only food stamps need not be signed. An agency receiving a hearing request shall immediately date-stamp the request and forward it to the division.

...

Wis. Admin. Code, §HA 3.05(2)(a).

Here agency case notes indicate that Petitioner orally requested a hearing on September 5, 2013. The agency was supposed to reduce that to writing and forward it to the Division of Hearings and Appeals. It did not do so. This is not a timely request for the May 1, 2013 case closure but is timely for the June 11, 2013 denial of FoodShare because of income.

The next question is whether Petitioner's FoodShare request was correctly denied because of income in excess of FoodShare income limits.

To receive FoodShare benefits a household must have income below gross and net income limits. 7 *Code of Federal Regulations (CFR)*, §273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 1.1.4. The agency must budget all income of the FS household, including all earned and unearned income. 7 *CFR* § 273.9(b);

FoodShare Wisconsin Handbook (FSH), § 4.3.1. The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH*, §4.1.1. The gross income limit applicable here was \$1862.00; 200% of the FPL. See *FSH*, §8.1.1, release 12-02 and §4.2.1.1.

Frankly, the paystubs available from the agency electronic exhibits are not legible but Petitioner's gross annual pay and weekly paycheck summary was provided by the employer. That indicates fluctuating income. While typically 30 days of earnings are used to estimate future earnings, where income fluctuates a longer time period may be used. *FSH*, §1.2.4.2. Petitioner's monthly earned income through May 2013 was in excess of \$1230 per month. His SSDI is \$811. Together this is gross income of \$2041 per month. As this is over the FoodShare gross income limit for a household of 1, the agency correctly denied Petitioner's request for FoodShare.

CONCLUSIONS OF LAW

1. That Petitioner's appeal is timely with respect to a June 2013 denial of future benefits but is not timely as to a May 1, 2013 discontinuance of FoodShare.
2. That the agency correctly denied Petitioner's request for FoodShare because of income in excess of FoodShare program income limits

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

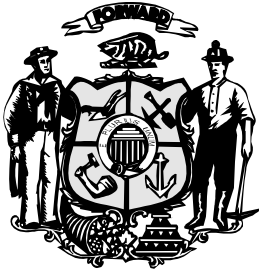
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of November, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 21, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability